TOWN OF ELIOT – BOARD OF APPEALS MEETING

February 18, 2010

PRESENT: Ed Cieleszko, Chairman; Phil Lytle; Bill Hamilton; Ellen Lemire, Alternate and John Marshall, Alternate

ABSENT: Jeffrey Cutting and Peter Billipp

1. 7:00 p.m. – ROLL CALL

Chairman Cieleszko called the meeting to order at 7 p.m.

2. PUBLIC HEARINGS:

Chairman Cieleszko said there were no public hearings tonight and the Board would go directly into the workshop.

3. WORKSHOP – Continuation of discussion regarding Bill Hamilton's letter on suggestions to Board of Selectmen's Consent Agreements

Chairman Cieleszko asked if everyone had a chance to look at Bill Hamilton's copy of what he developed for this meeting. A few members had not, so he said he would give them a couple of minutes to review Mr. Hamilton's latest draft.

Mr. Hamilton noted his draft appeared to be different than what he submitted and he asked if Paul White was going to be at the meeting tonight to explain the changes he made. Chairman Cieleszko replied no.

Mr. Hamilton said he was curious as to why Mr. White had suggested those changes, because it was not what the Board of Appeals had agreed on at their last meeting. Chairman Cieleszko said that they should disregard what Mr. White's revisions, but Mr. Hamilton said that Mr. White had made some good changes.

Chairman Cieleszko said that the Board would be reviewing Mr. Hamilton's draft dated February 4, 2010 and with "WMH" on the top.

Ms. Lemire asked Mr. Hamilton what issues he had with Mr. White's version. Mr. Hamilton said he was referring to page 2, where he wrote "left out;" namely, #3, *Initial Appeal Process*, and #4, *Public Hearing*. Mr. Hamilton said he thought that the Board agreed with the initial appeal process and the public hearing at the last meeting, and Mr. White made no mention of either #3 or #4 in his version.

The Board continued to discuss page 2, referring to the second paragraph. It was agreed that "including overview of the Code Enforcement Officer" should be struck and the sentence should end with "Board of Appeals."

The Board agreed to strike "in a Democratic form of government" in the third paragraph, beginning with "traditionally" and changing the word "but" to "and" as suggested by Mr. Hamilton, so that the sentence reads: *"Traditionally, these three branches are separate functions, and, as Attorney Vaniotis pointed out, after the Planning Board or Board of Appeals makes its decision, it's up to the Selectmen to enforce this decision."*

Mr. Lytle said he does not like the word "recommendations" and said he would prefer to use the word "suggestions." There was consensus to change the word "Recommendations" to "Suggestions."

Mr. Hamilton said that, on page 3, #9 had been left out. Chairman Cieleszko said the Board agreed to keep #9 in. Mr. Lytle asked why.

Chairman Cieleszko explained that in order to set a maximum penalty, the Board of Selectmen had to have some idea of the value of this penalty. Mr. Hamilton said that is what the Board discussed. There was a consensus to leave #9 in.

Mr. Hamilton said he agreed that, under "Closing Thoughts" – in the second paragraph – the words "the Board of Appeals feels that" should be added after the word, "However" so that the sentence reads: *However, the Board of Appeals feels that Consent Agreements should be carefully crafted and not be a substitute for the process already established…"*

Mr. Marshall said, in re-reading #9, he was having trouble with it *(Applicant must submit written, third party independent appraisal of the value of the violation and the economic benefit derived.)*, after reading 5, 6, 7 and 8.

Mr. Marshall said say you are a property owner who has built something and you are between a rock and a hard place because now the Board of Appeals is telling them to go to a third party appraiser – and spend more money. He thought that the word "may" should be used, not "must."

Mr. Marshall said that the Board should treat their neighbors like human beings. It sounds like the Board is going after them with handcuffs and M 16's. He said if someone made a mistake and now they found out they are one and one-half feet too close to the boundary line, Paul should write a letter of no action.

Chairman Cieleszko said they were not talking about that. Mr. Marshall said that the violation is not willful, not a threat to safety and is what he is reading, in order to qualify if the person is not a serious violator.

Mr. Hamilton said the Board of Appeals is trying to cover the qualifications of the violation, but the Board of Selectmen are the ones who must decide whether or not to go forward and levy a fine.

Ms. Lemire said she agreed with John Marshall, and that as far as being punitive, there needs to be some neutral way to value the impact if the Board of Selectmen feel it is necessary, sort of a preventive measure, but some people willfully break the ordinance.

Mr. Marshall said those people do not qualify. Mr. Hamilton said that sometimes people do not willfully break the ordinance.

Mr. Lytle brought up the issue of the overhang and a discussion ensued.

Ms. Lemire suggested "may be required to" instead of "must" in #9. Chairman Cieleszko suggested adding "as needed." Mr. Lytle said he liked "may be required."

Chairman Cieleszko suggested combining #9 and #10 and the Board agreed. Chairman Cieleszko said because #9 is dependent upon #10, this makes sense. Mr. Marshall said there is no appeal to it and that is what bothered him.

Mr. Hamilton said it may take one month to get the consent agreement. Mr. Marshall said there is no appeal. Mr. Hamilton said that is what Atty. Vaniotis had said. Chairman Cieleszko said that the issue was the appeal by the abutters.

Chairman Cieleszko said he needed help in understanding all these versions and noted that numbers 5, 6, 7 and 8 – and now 9 – have asterisks, which refer to "Recommendation from 30-A M.R.S..A., subsection 4452. He said he read that and it does not say that. Ms. Lemire said that it does, almost word from word. Chairman Cieleszko recommended removing the asterisks and the wording "Recommendation from 30-A M.R.S.A. – section 4452." Discussion continued.

Ms. Lemire suggested "derived from." Chairman Cieleszko said the only one that comes from State law is #9, which was #10.

Chairman Cieleszko said does the Board remember the ordinance that Mr. White gave them from Chebeague Island. Everyone said yes. Chairman Cieleszko said consent agreements are mentioned in Sec. 44-48, Enforcement, "C" Legal Actions, in the Shoreland Zoning and he read from the ordinance.

Mr. Lytle asked if that was the only district. Chairman Cieleszko said yes, just in the Shoreland zone. A brief discussion ensued.

Chairman Cieleszko said the sentence should now read: "*Maximum penalties may not exceed an amount equal to twice the economic valued resulting from the violation. If needed, the applicant must submit a written third party independent appraisal of the value of the violation and economic benefit derived.*"

Chairman Cieleszko asked for a motion to accept the changes and forward the response to the Board of Selectmen.

John Marshall moved that the Board accept the letter to the Board of Selectmen, as amended, and forwarded to them with the suggestions made by the Board of Appeals, seconded by Phil Lytle. Vote was taken by a show of hands and motion passed, 4-0.

Mr. Hamilton said he would make the changes and send this letter to Barbara Thain, under Ed Cieleszko's signature as Chairman of the Board of Appeals, so that Barbara can give it to the Board of Selectmen.

4. REVIEW AND APPROVED MINUTES AS NEEDED

Chairman Cielesszko said the Board members would review each page of the January 21, 2010 minutes and offer any changes.

Phil Lytle moved the Board approve the minutes of January 21, 2010 as amended, seconded by Ellen Lemire. Vote taken by a show of hands – 4-0, unanimous. Motion passed.

5. OTHER BUSINESS AS NEEDED:

Ms. Lemire said that, at the last meeting, the Board had discussed not hearing any new cases after 11 p.m. Chairman Cieleszko said that is what he wanted to talk about – and asked the Board to review his submittal, which he is offering as an addition to the Board of Appeals' by-laws, Section V., Meetings: Subsection H:

> *If a public hearing on the agenda of a regularly scheduled meeting of the Board Of Appeals has not been opened by 10:00 p.m., then, with the consent of the parties to the action, a motion can be made to re-schedule that hearing to the next regularly scheduled meeting of the Board of Appeals. This consent of parties and motion will not be considered the first meeting on the appeal.*

Ms. Lemire asked why the last sentence was in. Chairman Cieleszko replied, because the Board has to make a decision within 60 days.

Chairman Cieleszko read from (k) under Sec. 45-50, Zoning, "*the failure of the Board to reach a decision within 60 days of the filing of the appeal constitutes a denial of the appeal, unless the Board has already scheduled a meeting on the appeal, under which circumstance the 60 days begins on the date of the first meeting on the appeal.*"

Chairman Cieleszko said he doesn't want the clock to start and if the Board schedules a meeting, the clock will start for the appellant. Mr. Marshall asked what is the process, after a person goes to the CEO? Chairman Cieleszko explained that once they see Mr. White, they have to file an appeal and the Board of Appeals must meet within 30 days to hear the appeal.

John Marshall moved to add Section H to the Board's by-laws, seconded by Bill Hamilton. Discussion: Mr. Marshall asked if the Board of Appeals has the authority to reschedule another meeting and would the Board have to post another agenda. Chairman Cieleszko replied the

appellant, abutters, interested parties and parties to the action would already be present at the meeting, and they would schedule the meeting to a time certain, so it would negate the necessity of re-posting the agenda. He said they don't know the schedule of the Town Hall Conference Room.

Mr. Marshall agreed that 10:00 p.m. was a good time to evaluate the situation. Ms. Lemire asked what about the consent of the parties to the action. Chairman Cieleszko explained that the parties to the action are the Code Enforcement Officer, Planning Board, Board of Selectmen, and abutters. Ms. Lemire said not the general public.

Chairman Cieleszko said that he would announce this in the beginning of the meeting, as part of the proceedings, that if the Board was not going to case by 10 o'clock, it would be rescheduled to the next meeting, if all parties to the action agree.

Mr. Lytle said it may be a case of over-scheduling public hearings. Ms. Lemire said they may have to have two meetings in a month.

Chairman Cieleszko said if the situation arises, he could call a special meeting. Mr. Lytle said we should re-schedule it the following week. Chairman Cieleszko said it would be automatically two weeks because they would have to re-post everything.

Mr. Marshall thought that it would be considerate for the Board to re-schedule, especially if the appellants had lawyers present. Mr. Marshall asked when the hearings are scheduled, is the appellant given a specific time. Chairman Cieleszko replied sometimes they tell the applicant to come later on, but not necessarily.

Mr. Marshall asked if the Board could tell how long the hearing would be. Ms. Lemire said sometimes. Chairman Cieleszko replied they could not guarantee anything.

Phil Lytle moved that the new subsection H be added to the Board of Appeals' by-laws, seconded by Bill Hamilton. Vote taken by a show of hands, 4-0 – unanimous. Motion passed.

There were no other issues that were brought forth by the Board to discuss.

6. ADJOURN:

John Marshall moved to adjourn the meeting at 8:15 p.m., seconded by Ellen Lemire. Meeting adjourned on a unanimous voice vote.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by:_____
Ed Cieleszko, Chairman, Board of Appeals

Date Approved: May 20, 2010